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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
IDAHO PUBLIC UTILITIES COMMISSION)
Petition for Declaratory Ruling)
Concerning Section 251(h)(2) of)
the Communications Act)
Treatment of CTC Telecom Inc. and Similarly)
Situated Carriers as Incumbent Local Exchange)
Carriers under Section 251(h)(2) of the)
Communications Act)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 98-221

COMMENTS OF MCI WORLDCOM, INC.

MCI WORLDCOM ("MCIW"), hereby submits its Comments in support of the above-captioned petition ("Petition") filed by the Idaho Public Utilities Commission ("PUC").¹

I. INTRODUCTION AND SUMMARY

MCIW fully supports the petition of the Idaho Public Utilities Commission seeking treatment of CTC Telecom, Inc., ("CTC") as an incumbent local exchange carrier ("ILEC") in accordance with section 251(h)(2) of the Telecommunications Act of 1996 ("Act"). Based on the information in the record thus far, CTC appears to satisfy the criteria set forth in Section 251(h)(2) because (1) CTC would occupy a position in the market comparable to an incumbent LEC; (2) CTC would provide local exchange service to all or virtually all of the subscribers in an area that did not receive telephone exchange service from a NECA member as of the date of the

¹ Idaho Public Utilities Commission, Petition for Declaratory Ruling concerning Section 251(h)(2) of the Communications Act, Treatment of CTC Telecom, Inc. and Similarly Situated Carriers as Incumbent Local Exchange Carriers under Section 251(h)(2) of the Communications Act, CC Docket No. 98-221 (filed Nov. 20, 1998).

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enactment of the 1996 Act; and (3) treatment as an ILEC would be consistent with the public interest.² CTC would therefore meet each of the requirements of Section 251(h)(2).

II. CTC WOULD OCCUPY A DOMINANT POSITION IN ITS SERVICE AREA COMPARABLE TO A STATUTORILY DEFINED INCUMBENT LEC

MCIW agrees with the Idaho PUC that CTC would occupy a dominant position in the Hidden Springs development (“Hidden Springs”) comparable to positions held by incumbent LECs, as defined in section 251(h)(1) of the Act. By virtue of its exclusive contract to provide facilities-based telecommunications services to virtually all subscribers in the planned community, at least initially, CTC will not be subject to competition. As no other carrier will have facilities capable of serving the planned community, CTC will control the essential bottleneck facilities. New entrant access to these essential bottleneck facilities will be critical for the development of competitive local exchange service to the residents of Hidden Springs.

CTC’s exclusive agreement with Hidden Springs will afford it all of the advantages of a traditional ILEC.³ The Commission has traditionally determined whether a carrier is dominant by whether it has market power, which includes having control over essential bottleneck facilities, the absence of a competing provider of the same services, and the ability or incentive engage in anticompetitive conduct. Such control provides CTC with the ability to engage in anticompetitive behavior. CTC’s existing infrastructure will enable it to serve new customers at a much lower incremental cost than a new facilities-based entrant that must install its own

² Guam Public Utilities Commission, Petition for Declaratory Ruling Concerning Sections 3(37) and 251(h) of the Communications Act, Treatment of the Guam Telephone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers under Section 251(h)(2) of the Communications Act, CCB Pol. 96-18, CC Docket No. 97-134 at ¶25 (released May 19, 19997)(Guam).

³ *Id.* at ¶27.

switching, trunking and loops.⁴ Thus, access to CTC's essential bottleneck facilities is critical for new entrants to compete for the provision of local service. In essence, CTC will have the market power, economies of density, connectivity, scale, and control of the local network in Hidden Springs, that is comparable to that possessed by incumbent LECs under section 251(h)(1). Absent treatment as an ILEC, CTC would be under no express obligation to interconnect, unbundle, or resell its network elements to competing providers, which would significantly inhibit the development of competitive local exchange service and deny CTC subscribers the benefits of competition to which they are entitled.

III. CTC WOULD SATISFY THE CRITERIA FOR TREATMENT AS AN INCUMBENT LEC UNDER 251(h)(2)(B) AND SUCH TREATMENT WOULD SERVE THE PUBLIC INTEREST

Section 251(h)(2)(B) provides that the Commission may treat CTC and similarly situated carriers as incumbent LECs where "the LEC has 'substantially replaced an incumbent local exchange carrier [as] described in section 251(h)(1).'"⁵ In Guam, the Commission tentatively concluded that the requirement of Section 251(h)(2)(B) is "satisfied where the LEC at issue provides local exchange service to all or virtually all of the subscribers in an area that did not receive telephone exchange service from a NECA member as of the date of enactment of the 1996 Act."⁶

CTC has an exclusive contract to provide facilities based services to the yet to be constructed Hidden Springs. No other carrier will have facilities capable of serving the planned

⁴ See Guam at ¶32.

⁵ Id. at ¶24.

⁶ Id. at ¶25.

community. Thus, CTC will provide service to all or virtually all of the subscribers in the area. As the development is yet to be constructed, none of the subscribers could have received telephone exchange service from a NECA member upon enactment of the 1996 Act.


Treatment of CTC as an ILEC is necessary to avoid frustrating Congressional intent of opening all local markets to competition. Incumbents such as CTC are precisely the type of LEC at which section 251 is directed. Subjecting dominant LECs to the procompetitive requirements of section 251, would foster the development of competition that would not otherwise develop and provide subscribers in Hidden Springs and other communities with the benefits of competitive local exchange service.

IV. CONCLUSION

For the foregoing reasons, the Commission should classify CTC as an ILEC in order to facilitate local competition and afford consumers a choice of service providers.

Respectfully submitted,

MCI WORLDCOM, Inc.


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Dated: January 11, 1999

CERTIFICATE OF SERVICE

I, Lonzena Rogers, do hereby certify that on this eleventh day of January 1999, I served by first class United States Postal Service, postage prepaid, a true copy of the foregoing Comments, upon the following:

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